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EXAMINER

WONG, LESLIE A

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARLOS JOSE BARROSO and EAPEN GEORGE

Appeal 2009-003624
Application 10/811,003
Technology Center 1700

Decided:¹ July 29, 2009

Before EDWARD C. KIMLIN, PETER F. KRATZ, and
MARK NAGUMO, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-15. We have jurisdiction under 35 U.S.C. § 6(b).

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Claim 1 is illustrative:

1. A method for selecting an additive for a food product said method comprising the sequential steps of:
 - (a) identifying a demographic group;
 - (b) identifying a plurality of flavor drivers familiar to said demographic group;
 - (c) identifying a desired product concept for said food product;
 - (d) identifying at least one flavor driver as supporting said product concept by consumer testing of the demographic group; and
 - (e) applying the at least one flavor driver identified in step (d) to said food product.

The Examiner relies upon the following reference as evidence of obviousness (Ans. 2):

Mary Earle et al., *Food Product Development* 194-256, 317-347 (Woodhead Publ'g Ltd. 2001) (hereafter "Earle").

Appellants' claimed invention is directed to a method for selecting an additive for a food product. The method comprises the steps of identifying a demographic group and a plurality of flavor drivers familiar to that group. Appellants' Specification states that "[a]s used herein, a flavor driver comprises a food additive, such as seasoning, that affects the taste and/or smell of a food product" (p. 10, ll. 4-5). The method also comprises identifying a desired product concept for the food product, and the Specification provides a definition that "a desired product concept comprises an implicit or express desired emotional response" (p. 10, ll. 19-20). The

method further includes identifying at least one flavor driver which supports the product concept by consumer testing of the demographic group, and applying the flavor driver identified by the consumer testing to the food product.

Appealed claims 1-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Earle.

Appellants do not present separate arguments for claims 2-4, 8-13, and 15. Accordingly, these claims stand or fall together with claim 1.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejection.

We agree with the Examiner that Earle, like Appellants, discloses a method for developing a food product in accordance with the particular tastes of a targeted demographic group. In discussing the development of a food group, Earle recognizes that "[b]road consumer characteristics such as nationality, religion, race, age, sex, education and socioeconomics are the basis for consumer attitudes, motivation and behavior" (p. 213, last para.). As examples of national preferences for different food tastes, Earle teaches that Australian products, such as potato chips and canned foods, are saltier than New Zealand products, whereas New Zealand products are sweeter (*see* p. 222). Furthermore, while Appellants maintain that Earle discloses a company brainstorming, top-down approach as opposed to their driven bottom-up approach, Appellants acknowledge that Earle expressly teaches that "[o]bserving the behaviour of the consumer . . . can also generate ideas

for new products . . . [t]he consumer groups also screen the new product ideas” (p. 227).

Accordingly, contrary to Appellants’ arguments, we fully concur with the Examiner that Earle evidences that it was known in the art to identify specific flavor drivers, or food additives such as seasoning, that are favored by a particular demographic group, and apply such flavor drivers to a food product that is prepared for that demographic group. As for the claimed step of identifying a desired product concept for the food product, which Appellants define as an implicit or express desired emotional response, this step is necessarily a part of the known step of identifying flavor drivers that are preferred by a particular demographic group. Such preference naturally embraces the emotions of acceptance, happiness and satisfaction.

Manifestly, the entire point of the known practice of identifying particular tastes, such as sweet, salty and spicy, that are favored by a demographic group is to elicit a favorable emotional response upon ingesting the food product. In addition, we find no error in the Examiner’s conclusion that Earle establishes the obviousness of claimed step (d) of using consumer testing of a demographic group to identify a flavor driver or additive that supports the product concept of a desired emotional response. It can hardly be gainsaid that product testing of a demographic group for an emotional response to a food product was notoriously well known at the time of filing the present application.

In our view, the claimed method encompasses, for example, identifying a specific age group that frequents a Tex-Mex restaurant, identifying a plurality of spices for salsa that is familiar to the group, identifying satisfaction as a desired emotional response for the group,

identifying at least one spice that supports or elicits the response of satisfaction by consumer testing of the group, and applying that spice or spices to the salsa. We find that such a methodology for identifying particular food additives which produce a favorable emotional response by a tested demographic group would have been suggested by the state of the prior art evidenced by the Earle disclosure.

Concerning separately argued claim 5, we find nothing non-obviousness in incorporating smelling and tasting the food product in the consumer test and comparing the response with any number of possible responses illustrated on a concept board. Certainly, fundamental to consumer testing of a food product is to document the responses of the consumer which entail emotional responses (claim 6). As for the flavored oil of separately argued claim 7, olive oil is just one example of a flavored oil that would have been obvious for one of ordinary skill in the art to use as a food additive for a particular demographic group.

We also agree with the Examiner that the subject matter of separately argued claim 14 would have been obvious to one of ordinary skill in the art in view of Earle's teaching that it was known in the art that different labels on products, such as Dutch tomatoes, affect quality determination by consumers (*see* p. 222, second para.).

As a final point, we note that Appellants base no argument upon objective evidence of non-obviousness, such as unexpected results.

In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims is affirmed.

Appeal 2009-003624
Application 10/811,003

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a) (2008).

AFFIRMED

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